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SUBJECT: Making CAFTA-DR Produce in a Down Market

¶1. Summary: CAFTA-DR has substantially improved Guatemala's ability to participate and compete in global markets. Regulatory structures were modernized and wide swaths of the Guatemalan economy were opened to international competition. As a result, trade increased substantially, foreign direct investment trebled and poverty began to decline. However, continued lack of capacity has slowed Guatemala's ability to take full advantage of the agreement to reduce poverty, and protect workers and the environment. The current global economic crisis, with consequent reductions in tax revenue is slowing Guatemala's progress in alleviating poverty, improving environmental protection and enhancing labor rights. While gains have been made, more needs to be done to help the GOG build the capacity needed to fulfill its obligations under the Dominican Republic-Central American Free Trade Agreement (CAFTA-DR) to enhance environmental protection, improve worker rights, and extend the benefits of trade to all sectors of Guatemala. This cable examines each of these areas and outlines technical assistance projects that can mitigate the negative impact the economic crisis will have in these areas and continue to help the GOG expand its capacity to reduce poverty and fully meet its labor and environmental obligations. End summary.

Labor Protection

Obligations:

¶2. Under CAFTA-DR, Guatemala reaffirmed its obligations as a member of the International Labor Organization (ILO) and pledged to ensure that labor principles enshrined in the 1998 ILO Declaration were protected including: 1) the right of association; 2) the right to organize and bargain collectively; 3) a prohibition on the use of any form of forced or compulsory labor; 4) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and 5) acceptable conditions of work with respect to minimum wages, hours of work, and occupation safety and health.

¶3. The agreement provides wide latitude in how member states enforce these standards and notes specifically that member parties can "exercise discretion with respect to investigative, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforce labor matters."

¶4. CAFTA-DR includes a Labor Cooperation and Capacity Building Mechanism to improve labor protection in member countries. As an annex to the CAFTA-DR labor chapter, the mechanism encourages points of contact to coordinate the development of priorities, seek support from international organizations (such as the ILO, the IDB, the World Bank and the OAS) to advance labor rights through technical assistance, information exchange, and joint conferences and projects.

Performance since CAFTA-DR entry into force:

15. The Capacity Building Mechanism has been used to deliver technical assistance (via DRL, DOL and USAID) in the labor area including projects to eliminate the worst forms of child labor and reduce discrimination and harassment against women in the maquilas, and increase and improve the capacity of the labor inspectorate. While some advances have been made, Guatemala has fallen short of expectations for protecting worker rights. The GOG needs to express its commitment to labor protections through vigorous investigation and prosecution of labor complaints and murders of labor unionists. The GOG would also benefit from additional technical assistance to QThe GOG would also benefit from additional technical assistance to strengthen its capacity to enforce existing labor legislation.

Next steps to improve performance:

16. Technical assistance should be devoted to increasing Guatemala's capacity to inspect work sites, issue and enforce arrest warrants, prosecute cases and investigate labor violations. Specific projects could strengthen the Special Prosecutor's Unit for Crimes against Journalists and Unionists and help the Ministry of Labor develop a robust system for regularly inspecting conditions at worksites. Inspectors should be hired as professional civil servants, be given specific technical training and provided adequate security against intimidation. Regulations should be reformed to ensure inspector access to work sites, expand alternative dispute resolution mechanisms and enhance inter-agency collaboration to improve the effective promotion and protection of labor rights and follow through on labor court cases.

17. These are all areas that were specifically recommended by DOL/OTLA and in its recent CAFTA-DR labor submission report. The

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provision of technical assistance to help the GOG address some of these deficiencies could help ease the financial burden of implementing measures to better enforce labor laws, particularly in a year in which the economic downturn is putting additional pressure on budgetary resources. Efforts should be devoted to assistance areas that will help build robust and self-sustaining institutions that will employ high-quality technical staff hired under special arrangements shielding them from the likelihood they would be replaced at the end of the current Colom administration. Technical assistance would need to be accompanied by continued Embassy demarches to the GOG to protect worker rights.

Environmental Protection

Obligations:

18. CAFTA-DR reserves the right of each party to establish its own levels of domestic environmental protection but specifies that each Party will ensure its laws and policies encourage "high levels of environmental protection." It also prohibits CAFTA-DR countries from waiving environmental laws to promote trade or attract investment. The annex to Chapter 17 calls on the Parties to work together to share best practices, exchange information and foster partnerships to address current or emerging conservation and management issues, including personnel training and capacity building.

Performance since CAFTA-DR entry into force:

19. CAFTA-DR provided an important policy framework upon which to center discussions on ways to improve environmental protection in Guatemala and deliver technical assistance. Since the inception of CAFTA-DR we have worked with Guatemala to strengthen its ability to review and evaluate Environmental Impact Assessments (EIAs), worked with the Ministry of Environment and Natural Resources (MARN) to develop science-based regulations for monitoring water, air and soil

around mines, improved monitoring and control of waste water discharges, worked to improve the environmental law capacity of the Courts and established a public complaint unit to manage environmental claims and oversee environmental obligations set out in Chapter 17 of CAFTA-DR.

Next steps to improve performance:

¶10. Improvements to Guatemala's environmental protection regime should focus on: 1) ensuring the Ministry of Environment and Natural Resources and the other principal entities with environmental protection responsibilities are equipped to make sound, science-based judgments with respect to enforcing the legal framework as well as granting approval for development projects, issuing regulations, and monitoring compliance with environmental laws; 2) protecting bio-diversity in the sensitive Maya Biosphere region; and 3) creating incentives for Guatemala to protect the rainforest through active development of and participation in a carbon trading regime. All such efforts should involve the active participation of private sector businesses and NGOs. Efforts in these areas will also positively impact many of the issues related to Global Climate Change and Guatemala's high risk susceptibility to climate change.

¶11. Specific projects for Guatemala could include:

-- Continued support for the development of science-based regulations for the monitoring of air, soil and water in industry in general and mining zones: Monitoring and enforcement bodies need strengthening to more effectively carry out their important role. Mining remains a polemical activity in Guatemala with powerful domestic and international interests advocating both for and against mining activities. Guatemala possesses substantial mineral resources that, if more fully developed, could support substantial employment and provide important revenue streams for the national government and local communities. While there is also substantial social controversy surrounding mining, from a strictly environmental point of view, the best way to ensure that mineral resources are responsibly developed and robust environmental safeguards are implemented is through rigorous application of science-based regulations to monitor the environmental impact of mining. Projects should include: 1) the creation of a database of best practices and regulations; 2) technical training and the development of Standard Operating Procedures on how to properly conduct monitoring visits, including maintaining samples and submitting them for certified testing; and 3) working with industry, government and civil society to increase trust and information sharing between the all interested parties. That said, mining remains a "third wire," with sensitive

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political and social issues for affected communities.

-- Expanded use of SERVIR: Guatemala's Ministry of Environment and the Institute of Seismology, Weather, and Meteorology would like to expand their understanding and usage of the regional global climate, land use and weather monitoring system SERVIR (Regional Visualization and Monitoring System). SERVIR was created by NASA and supported by USAID, the World Bank, and CCAD (the Central American Commission for the Environment and Development), to provide live satellite images, earthquake records and fire monitoring of Central America. Guatemalan officials would benefit from training in how to use information from SERVIR to monitor and control forest fires, track deforestation and work to address the largest threats, protect natural parks and cultural areas, and develop a benchmark survey of water and soil quality across the country that could be overlain onto a map. The enhanced capacities of SERVIR would be available to others in the region as well as the public via its web portal.

-- Protection of Biodiversity: Linking of biodiversity and natural resources conservation with sustainable forestry practices (timber and non-timber), eco-tourism and environmental services in general is critical for attaining long-term improvements. More needs to be done in this area.

-- Participation in Carbon Markets: Despite market limitations, USAID estimates Guatemala has potential for sequestering 89 million tons of carbon verifiable annually. The development of five or more pilot carbon sequestration projects, including one in the Maya Biosphere Reserve, would contribute to generating a national program within the framework of the global climatic challenge. The projects would contribute to establishing carbon baselines, development of prospectus for carbon sequestration projects, certification of carbon sequestration projects and approaching potential buyers for these projects in international carbon markets.

Poverty Reduction

Obligations:

¶12. CAFTA-DR makes no specific provision for poverty reduction, but the benefits of the overall agreement were intended to be shared by all sectors of society. In the agreement's preamble the creation of new employment opportunities and improved working conditions and living standards is specifically cited as one of the purposes of the agreement. To facilitate poverty reduction through trade, the Committee on Trade Capacity Building was created to seek the prioritization of trade capacity building projects, coordinate with international donor institutions, NGOs and private sector entities and promote reforms and investment necessary to foster trade-driven economic growth, poverty reduction and adjustment to liberalized trade.

Performance since CAFTA-DR entry into force:

¶13. Since the entry into force of CAFTA-DR, substantial efforts have been devoted to developing trade capacity to ensure the benefits of trade extend to all Guatemalans. However, more needs to be done. Trade capacity building assistance is an important tool in poverty alleviation. Technical assistance has helped Guatemala comply with rules of origin, customs administration and sanitary and phytosanitary (SPS) requirements. Training on these and other issues necessary for small- and mid-sized business owners to compete in the export markets has drawn substantial numbers of new entrepreneurs into the export market. USAID/Guatemala's Economic Entrepreneurship into the export market. USAID/Guatemala's Economic Growth program has provided technical assistance to rural small and medium-scale enterprises using a supply-chain approach in high-value services. The supply-chain approach links producers directly with markets and generates employment and income for rural small and medium scale producers. This supply-chain focus on a wide variety of products and services including high-value gourmet vegetables and agricultural products, gourmet coffee, forest floral greenery, non-traditional species quality hardwood, handmade ceramics, hand-woven textiles and community eco-tourism. Perhaps most importantly, is the employment generation/poverty reduction impact of such assistance, where one-half of small-scale producers increased income in the highlands is spent locally, resulting in a major economic multiplier effect, more than for any other investment. USDA in conjunction with the USAID Regional office in El Salvador has provided technical assistance to both government officials and the private sector on sanitary and phytosanitary issues enabling the country to meet many US regulations and access to the US market for new agricultural products.

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Next steps to improve performance:

¶14. To ensure the impact of the global economic downturn is minimized, particularly for vulnerable populations such as the rural poor, we should continue to fund programs to ensure that the economic benefits of CAFTA-DR are effectively distributed.

Technical assistance should be devoted to helping micro, small and mid-sized businesses, especially farmers, adopt new technologies, meet international quality standards and open new markets, principally in the agricultural, coffee, tourism, and forestry sectors. In doing so we should take advantage of the full range of USG technical assistance and leverage international financial institutions and the private sector to ensure maximum impact of USG assistance.

¶15. Specific projects should include technology transfer, training and institutional strengthening programs to assist small-farmers and cooperatives understand and take advantage of export potential.

-- We should leverage international financial institutions and others in the donor community to improve essential small infrastructure (key community bridges, farm-to-market roads, small scale irrigation systems) and reduce the costs of market access for rural Guatemalans.

-- Significant work is needed to rebuild Guatemala's agricultural research and extension service. Without it, the successes in employment generation/poverty reduction from increased high-value agriculture exports are at risk in the short- to medium-term due to inadequate capacity to treat continuously developing threats from plant pests and diseases.

-- We should utilize technical assistance under the U.S. Treasury's Small Business Lending Initiative to help Guatemala create a more robust legal and supervisory framework for lending to small and medium sized businesses.

-- If the program expands, Guatemala should be included in the next tranche of countries under the U.S.-Chile Infrastructure Finance Experts Corps (IFEC) project. IFEC aims to leverage the potential of Public-Private Partnerships in mobilizing the private sector to ensure adequate financing of larger infrastructure projects and improve transparency in project execution.

-- We should utilize the U.S.-Brazil Biofuels Initiative as a catalyst to bring together interests in renewable energy to create the legal framework necessary to develop a robust domestic market for the production and consumption of biofuels.

-- Technical assistance should also be dedicated to expanding research into the development for use as biodiesel of *Jatropha curcus* - a promising feedstock for biodiesel native to Guatemala, cultivated by small farmers and can be grown in areas unsuitable for most food crops. Preliminary studies show *Jatropha* grown in marginal agricultural areas of Guatemala could substitute up to 80 percent of imported diesel. Successful development of biodiesel for domestic consumption would improve Guatemala's balance of payments, and provide an important alternative cash crop for small farmers.

¶16. Comment: To ensure the current global economic environment does not slow or reverse important gains in poverty alleviation made in the wake of CAFTA-DR, the USG, together with partners in the donor community, should work to deepen engagement, especially with vulnerable populations, to ensure they enjoy the benefits of the free trade agreement. Similarly, CAFTA-DR provides important frameworks and remedies to enhance worker rights and improve environmental protection. Important gains have been made, but Qenvironmental protection. Important gains have been made, but institutional weakness and capacity constraints, and to some extent political will, have weakened the Guatemalan government's ability to take full advantage of the labor and environmental provisions of CAFTA-DR. Continued USG engagement is necessary to ensure the Guatemalan government continues to improve its capability to ensure high standards of environmental protection and safeguards for workers.